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3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

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6 TOMMIE LEE McDOWELL, JR.,

Case No. 3:19-cv-00230-MMD-WGC

7 Plaintiffs,

ORDER

8 v.

9 TIMOTHY HULSEY, *et al.*,

10 Defendants.
11

I. SUMMARY

12 *Pro se* Plaintiff Tommie Lee McDowell, Jr. brings this action under 42 U.S.C. §
13 1983. Before the Court are two Reports and Recommendations (individually, a “R&R” or
14 “Recommendation”) of United States Magistrate Judge William G. Cobb (ECF Nos. 121
15 (“First R&R”), 125 (“Second R&R”)) recommending the Court take various actions
16 described in more detail below on most of the motions currently pending in this case. This
17 order does not address three motions. (ECF Nos. 118, 130, 133.) Plaintiff objects to the
18 Second R&R, but not the First R&R. (ECF Nos. 128, 131.) Defendants did not file a
19 response to Plaintiff’s objection to the Second R&R. (ECF No. 127 (“Objection”).)
20 Because Plaintiff does not object to the First R&R, and the Court does not find Judge
21 Cobb clearly erred in it, and because Plaintiff appears to misapprehend the summary
22 judgment standard in his Objection—and as further explained below—the Court will
23 accept and adopt both R&Rs in full.

24 **II. BACKGROUND**

25 The Court incorporates by reference and adopts the background Judge Cobb
26 provided in the two R&Rs, and does not restate that background here. (ECF Nos. 121 at
27 2-3, 125 at 2-4.)

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1 **III. DISCUSSION**

2 The Court first addresses the First R&R, and then the Second R&R.

3 **A. First R&R**

4 The Court “may accept, reject, or modify, in whole or in part, the findings or
 5 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party
 6 fails to object to a magistrate judge’s recommendation, the Court is not required to
 7 conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas*
 8 *v. Arn*, 474 U.S. 140, 149 (1985); see also *United States v. Reyna-Tapia*, 328 F.3d 1114,
 9 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and
 10 recommendations is required if, but *only* if, one or both parties file objections to the
 11 findings and recommendations.”) (emphasis in original); Fed. R. Civ. P. 72, Advisory
 12 Committee Notes (1983) (providing that the Court “need only satisfy itself that there is no
 13 clear error on the face of the record in order to accept the recommendation.”).

14 Because there is no objection to the First R&R (ECF Nos. 128, 131), the Court
 15 need not conduct de novo review, and is satisfied Judge Cobb did not clearly err. Here,
 16 Judge Cobb first recommends the Court grant Plaintiff’s motion to voluntarily dismiss
 17 Count V, and thus deny his motions for judgment on the pleadings regarding that count
 18 and limit the scope of one of Plaintiff’s motions for summary judgment accordingly. (ECF
 19 No. 121 at 3.) Judge Cobb next recommends the Court deny Plaintiff’s two motions
 20 seeking judgment on the pleadings on his Count IV because it is not clear that Plaintiff is
 21 entitled to judgment as a matter of law as to that Count at this time. (*Id.* at 3-5.) Judge
 22 Cobb finally recommends that Plaintiff’s motion for relief from judgment be denied
 23 because he is not seeking relief from any judgment, but rather appears to be seeking
 24 summary judgment, though he separately filed a motion for summary judgment regarding
 25 that same claim in any event. (*Id.* at 5.) The Court agrees with Judge Cobb. Having
 26 reviewed the First R&R and the record in this case, the Court will accept and adopt the
 27 First R&R in full.

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1 **B. Second R&R**

2 Where a party timely objects to a magistrate judge's report and recommendation,
3 then the Court is required to "make a de novo determination of those portions of the [report
4 and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). The Court's
5 review is thus de novo because Plaintiff filed his Objection. (ECF No. 127.)

6 Judge Cobb's Second R&R addresses three motions for summary judgment
7 Plaintiff filed as to his retaliation claims, though Judge Cobb recommends one of the three
8 motions be dismissed as moot because the other two summary judgment motions
9 address the same issues. (ECF No. 125 at 1.) Judge Cobb recommends Plaintiff's
10 summary judgment motion regarding Plaintiff's retaliation claims in Count I and II be
11 denied because even Plaintiff seems to acknowledge there are genuine disputes of
12 material fact on these claims. (*Id.* at 6-7.) Judge Cobb also recommends the Court deny
13 this motion because Defendants present other disputes of material fact regarding Count
14 I and II as well. (*Id.* at 7.) As to Count IV, Judge Cobb similarly finds that Defendant
15 Reubart established several disputes of material fact and therefore recommends that the
16 Court deny Plaintiff's summary judgment motion as to that Count. (*Id.* at 8-12.)

17 In his Objection, Plaintiff essentially argues that Judge Cobb erred because his
18 evidence is stronger or more compelling than Defendants' evidence, and thus he should
19 be granted summary judgment now instead of proceeding towards trial on his retaliation
20 claims. (ECF No. 127 at 2-9.) But this is not the law. Instead, as Judge Cobb stated in the
21 Second R&R (ECF No. 125 at 5), "[c]redibility determinations, the weighing of the
22 evidence, and the drawing of legitimate inferences from the facts are jury functions, not
23 those of a judge, whether he is ruling on a motion for summary judgment or for a directed
24 verdict." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Plaintiff's basic
25 argument that his evidence shows he should prevail on his retaliation claims despite
26 Defendants' proffered, contrary evidence supporting their positions is better directed to a
27 jury at trial than a judge at summary judgment. The Court overrules Plaintiff's Objection
28 and will accept and adopt the Second R&R in full.

1 **IV. CONCLUSION**

2 The Court notes that the parties made several arguments and cited to several
3 cases not discussed above. The Court has reviewed these arguments and cases and
4 determines that they do not warrant discussion as they do not affect the outcome of the
5 motions before the Court.

6 It is therefore ordered that the two pending Reports and Recommendations of
7 United States Magistrate Judge William G. Cobb (ECF Nos. 121, 125) are accepted and
8 adopted in full.

9 It is further ordered that Plaintiff's objection (ECF No. 127) is overruled.

10 It is further ordered that Plaintiff's motion to dismiss Count V without prejudice
11 (ECF No. 112) is granted.

12 It is further ordered that Plaintiff's motion for judgment on the pleadings with
13 respect to Count V (ECF No. 62) is denied as moot.

14 It is further ordered that Plaintiff's motion to grant his motion for judgment on the
15 pleadings as to Count V (ECF No. 66) is denied as moot.

16 It is further ordered that Plaintiff's motion for judgment on the pleadings as to Count
17 IV (ECF No. 51) is denied.

18 It is further ordered that Plaintiff's motion to grant his motion for judgment on the
19 pleadings as to Count IV (ECF No. 67) is denied.

20 It is further ordered that Plaintiff's motion for relief from a judgment or order under
21 Rule 60 (ECF No. 117) is denied.

22 It is further ordered that Plaintiff's motion for summary judgment as to Counts I and
23 II (ECF No. 88) is denied.

24 It is further ordered that Plaintiff's motion for summary judgment that addressed
25 both Counts IV and V (ECF No. 89) is denied as moot.

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1 It is further ordered that Plaintiff's motion for summary judgment as to Count IV
2 (ECF No. 111) is denied.

3 DATED THIS 9th Day of August 2021.

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6 MIRANDA M. DU
7 CHIEF UNITED STATES DISTRICT JUDGE
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